IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1200 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT SURVEYORS PLANNERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioners

MS KATHA GAJJAR AGP for Respondents Nos. 1 & 2

MR HS MUNSHAW for Respondent No. 3 [Not present]

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners before this Court are the Association of Surveyors & Planners of Surat city and

some of its members. The petitioners challenge the modification incorporated in the Draft Development Plan prepared by the Surat Urban Development Authority [hereinafter referred to as, `the Authority'] with respect to the development of the city of Surat and the surrounding urbanizable lands. The impugned modification has been made by the State Government under the powers conferred under sub-clause (ii) of clause (a) of sub-section (1) of Section 17 of the Gujarat Town Planning & Urban Development Act, 1976 [hereinafter referred to as, `the Act'], under the Notification dated 31st January, 1986.

It appears that prior to the impugned Notification, Regulation 9.5 of the Draft Development Plan prepared by the Authority reads as under :-

9.5 Responsibility of Licensed Architect / Engineer / Surveyor -

(i) It shall be the duty of the person who prepares plans and sections to see that the existing position on the site is correctly represented on the plan. He shall also comply with the other requirements prescribed under these regulations, and as directed by the Authority.

(ii) It shall be the duty of the Architect/Engineer/Surveyor :

(a) To see that adequate provision is made for ensuring the safety of workers and others during excavation, construction and erection.

(b) To see that adequate provision is made for providing safe and adequate temporary structure required for construction and erection.

(c) To bring to the notice of the authority deviation, if any, from the approved plans and layouts made by the owner.

By the impugned Notification, under paragraph 93 thereof, clause (iii) has been added to the above Regulation 9.5 which reads as under :-

``93. After regulation No. 9.5 (ii), a new Regulation No. 9.5 (iii) shall be added as under :-

`The duties of the licenced Architect / Engineer /Surveyor, prescribed under regulation (i) and (ii) above for various types of buildings and Land Developments are enumerated below :-

Designation	Type of work
Licenced Architect	Preparation & execution of plans and designs for: a) Low rise & High rise buildings. b) Load bearing structures and frame structures. c) Layouts.
Licenced Engineer	1)Preparation & execution of plans and designs for: a) Low rise and High rise buildings. b) Load bearing and frame structures. c) Layouts. 2) Design & execution of structural members in buildings. 3) Overall safety of structures.
Surveyor	Preparation & execution of plans & designs for: a) Low rise buildings. b) Load bearing structures & framed

structures.

c) Layouts.

In view of the above modification, it is only the licenced Architects and licenced Engineers who are permitted to prepare and execute the plans and designs for the high rise buildings i.e., the Surveyors are precluded from preparing and executing the high rise buildings. It is this modification which is the cause of action in the present petition.

Mr. Kapadia has submitted that the Surveyors are as qualified as the Architects and Engineers are. In fact, certain Surveyors are far more experienced and better equipped to prepare and execute the plans for high rise buildings. Hence, the differentiation made amongst the Architects, Engineers and Surveyors in respect of preparation and execution of the plans and designs for high rise buildings is not based on any intelligible criterion and has no nexus with the objects of the Act. The said modification is, therefore, ultra vires Article 14 of the Constitution and requires to be quashed and set-aside. He has also submitted that the impugned modification is ultra vires Section 119 of the Act and ultra vires Article 19 (1) (g) of the Constitution in as much as the petitioners are deprived of their right to carry on their business in the manner they were hitherto carrying on.

I see no substance in either of the contentions raised by Mr. Kapadia. As recorded hereinabove, the impugned Notification has been issued by the State Government under the powers conferred upon it under Section 17(1)(a)(ii) of the Act and do not amount to regulations framed under the powers conferred under section 119 of the Act. The contention that the said Notification is ultra vires section 119 of the Act is ex facie bad and requires to be rejected.

So far as the discrimination amongst Architects, Engineers and Surveyors is concerned, be it noted that the qualification prescribed for each of them are different and distinct. The Architects and Engineers are qualified degree holders or diploma holders conferred by any University in India and recognized by All India Board of Technical Education or by the State Board of Technical Education; as the case may be. No such stringent requirement is prescribed in respect of the Surveyors i.e., a Surveyor may be a degree or diploma holder in Civil Engineering of any University or Institution. In

other words, such course is not required to be a course recognized either by All India Board of Technical Education or by a State Board of Technical Education; as the case may be. Besides, even certificate holders or draftsmen are recognized as Surveyors. The relevant regulation 9.2 of the General Development Control Regulation, 1981 made by the Authority reads as under :-

`9.2 Qualification and experience of persons licenced to act as Architect, Engineer or Surveyor shall be as under :-

(i) Architect - A person registered under the provisions of Enforcement of the Architects Act, 1972, as an Architect.

OR

A degree in Architecture of any University in India, recognized by All India Boards of Technical Education or Diploma in Architecture recognized by State Board of Technical Examinations of any State in India.

In addition to the qualification stated above, the applicant should have atleast five years experience in professional work, if he is a holder of Diploma in Architecture and two years experience, if he is a holder of Degree of Architecture.

(ii) Engineer - A Degree in Civil Engineering recognized by All India Board of Technical Education or a Diploma in Civil Engineering recognized by State Board of Technical Examinations, of any State of India. In addition to the qualifications stated above, the applicant should have atleast five years experience in professional work, if he is a holder of a Diploma in Civil Engineering and two years experience, if he is a holder of a Degree in Civil Engineer.

(iii) Surveyor - A Degree or Diploma in Civil Engineering of any University or Institution recognized by the Government or Institutions specially approved by the Authority.

OR

A Degree or Diploma in Architecture of any University or Institution recognized by Government.

OR

A Diploma in Architectural Assistantship awarded by Government Technical Education Board or a Certificate of Draftsmanship Civil for I.T.I or equivalent examination approved by Government; with practical experience of not less than five years. Provided further that the applicant also passes the test examination as may be prescribed by the Chief Executive Authority.

Provided further that the applicant having Diploma in Architectural Assistantship awarded by Government Technical Education Board shall not be required to pass the above test examination.

OR

A registered Architect of the United Kingdom or United States of America.

OR

Any person not fulfilling any of the above mentioned qualification, but who has been given Surveyor's licence by Surat Municipal Corporation prior to 19th February, 1981."

Hence, it cannot be gainsaid that the licenced Surveyors do not possess the same technical qualification as the licenced Architects or Engineers. Further, the Senior Town Planner of the State Government in his counter affidavit has stated that the impugned modification was required to be incorporated with a view to ensuring the safety of the high rise buildings and consequently of the people in general and their property. In my view the Development Regulations are made keeping in view the safety of the persons and their property and cannot be said to have no nexus with the object of the planning. I am, therefore, unable to hold that the discrimination in question amongst the Architects, Engineers and Surveyors is not based on intelligible criteria or have no nexus with the object to be achieved. The judgment of the Hon'ble Supreme Court of India in the

matter of Dinnapati Sadasiva Reddi, Vice-Chancellor, Osmania University vs. Chancellor, Osmania University & Ors. [AIR (1967) SC 1305] relied upon by Mr. Kapadia, therefore, shall not lend support to the petitioners. As far as the challenge on the ground of infringement of the fundamental right conferred under Art. 19 (1)(g) of the Constitution is concerned, I am of the view that the same is not tenable. As observed hereinabove, the impugned modification has been made with a view to safeguarding the public and their property. When the interest of public in general is involved, the individual interest of a person has to give way. The public interest should be supreme over the interest of an individual citizen. Besides, the fundamental rights conferred under Part III of the Constitution are not absolute but, are subject to reasonable restrictions. In my view, the restriction imposed under the impugned Notification can not be said to be unreasonable.

Mr. Kapadia has also relied upon the General Development Control Regulations, 1984 framed by the Rajkot Urban Development Authority and the General Development Control Regulations framed by the Ahmedabad Urban Development Authority. He has also submitted that no such distinction has been made by either of the said Authorities in respect of the Architects or Engineers on one hand and the Surveyors on the other. If the regulated development of the said two cities do not call for such differentiation, the differentiation made by the Authority under the guise of public safety is uncalled for. As I have stated earlier, the safety of the people and of their property shall be supreme, any distinction made to ensure such safety should be considered permissible and cannot be called in question on the touchstone of principle of equality enshrined under Article 14 of the Constitution.

No other contention is raised before me. The petition is dismissed. Rule is discharged. There shall be no order as to costs.

{Miss R.M Doshit, J.}

Prakash*